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Supreme Court, U.S.
FILED
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No.

In the

Supreme Court of the United States

PREFERRRD PROPERTIES, INC.

Respondent

v.

DUANE J. TILLIMON and
INDIAN RIVER ESTATES, INC.

Petitioners

On Petition for a Writ of Certiorari to the District Court of Appeals for Ohio Sixth Circuit

PETITION FOR WRIT OF CERTIORARI OF DUANE J. TILLIMON

Duane J. Tillimon,
Pro se Petitioner
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QUESTIONS PRESENTED FOR REVIEW

1. Is a Defendant entitled to have a judgment vacated under **Civ.R. 60(B)** when the Plaintiff has brought a Complaint against the Defendant that has no basis in law, or fact?
   (See First Assignment of Error)

2. Is a Defendant entitled to have a judgment vacated under **Civ.R. 60(B)** when the Plaintiff has committed perjury going to the heart of the case?
   (See Second Assignment of Error)

3. Is a Defendant entitled to have a judgment vacated when the Plaintiff has engaged in a *"deliberately planned and carefully executed scheme to defraud"* the Defendant, as evidenced by the fact that the Plaintiff had sued Defendant for specific performance and discrimination when the Plaintiff had no money to purchase the Defendant's property in the first place?
   (See Third Assignment of Error)

   NOTE: ***In Hazel-Atlas Glass Company v. Hartford Empire Company,*** 322 U.S. 238 (1944) the United States Supreme Court decided that an attorneys involvement in fraud constitutes a "fraud upon the court" and also decided that a "deliberately planned and carefully executed scheme to defraud" also constituted a "fraud upon the Court." The Sixth Circuit Court of Appeals in the appeal of this case chose not to recognize the precedent of the Supreme Court Case.

4. Is the Defendant entitled to have a judgment vacated under **Civ.R. 60(B)** when the admissions of the Plaintiff's attorney in his pleadings shows that the attorney knew that his client gave false testimony going to the heart of the case when the Plaintiff gave testimony that the Plaintiff had money to purchase the Defendants property when, in fact, the Plaintiff had no such money?
   (See Fourth Assignment of Error)

5. Is the Defendant entitled to conduct discovery and take the deposition of a HUD representative, and others, to determine the complete knowledge of the Plaintiff's attorney regarding the facts of the case.
(See Fifth Assignment of Error)

6. Should the District Court have ignored Tillimon's written complaint that Preferred Properties, Inc. refused to allow Tillimon to sell his rental properties in order to pay off the judgment, and that Preferred Properties, Inc., and their attorneys, were interfering with his tenants that wanted to purchase the houses they were renting by telling them that Preferred Properties, Inc. had a judgment lien on the house that Preferred Properties, Inc. would never release in order to financially destroy the Defendant so they could purchase his Real properties at Sheriff's sale for pennies on the dollar?
(See Sixth Assignment of Error)

7. Is the Plaintiff entitled to reimbursement by Defendant for attorney fees when the Plaintiff's judgment was based upon perjury and fraud?
(See Seventh Assignment of Error)

8. When the Court of Appeals allows parties represented by an attorneys to engage in Oral Argument, can the Court of Appeals deny a *pro se* party the right to engage in Oral Argument?
(See Eighth Assignment of Error)

LIST OF PARTIES
AND CORPORATE DISCLOSURE STATEMENT

The following are all parties to the proceeding in the court whose judgment is sought to be reviewed:

Petitioner Duane J. Tillimon

Petitioner Indian River Estates, Inc.

Respondent Preferred Properties, Inc.

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U. S. Court Of Appeals For The Sixth Circuit
Order Filed May 14, 2007
U. S. Court Of Appeals For The Sixth Circuit
Decision Filed January 22, 2007

United States District Court
For The Northern District Of Ohio
Western Division
Memorandum Opinion And Order
Filed March 7, 2005

United States District Court
For The Northern District Of Ohio
Western Division
Memorandum Opinion And Order
Filed January 4, 2005

Duane J. Tillimon's Letter To Judge Katz
January 23, 2004

U. S. Department of Housing
And Urban Development
Letter to Lewis Ellis, Executive Director
Preferred Properties, Inc.
August 1, 2002

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CIVIL RULES

Civ. R. 60(B)

STATUTORY PROVISIONS

Fair Housing Act, 42 U.S.C. {3601 et seq.}

Ohio Civil Rights Act, O.R.C. {4112.02(H)}

United States Constitution
Fourteenth Amendment
(Rights of "due process" and "equal treatment")

STATEMENT OF THE BASIS FOR JURISDICTION

The original Complaint was filed in the United States District Court Northern District of Ohio Western Division under Fair Housing Act, 42 U.S.C. {3601 et seq., and Ohio's Civil Rights Act, O.R.C. {4112.02(H), as an action for "specific performance" alleging "discrimination."

The judgment sought to be reviewed was issued by the United States Sixth Circuit Court of Appeals on January 22, 2007. A Petition for Rehearing En Banc was denied on May 14, 2007. Each of these decisions is contained in the Appendix.

Also contained in the Appendix is the U.S. District Court's Decisions of January 4, 2005 and March 7, 2005 denying the two Civ.R. 60(B) Motions for Relief From Judgment.

STATUTORY PROVISIONS INVOLVED

Fair Housing Act, 42 U.S.C. {3601 et seq.

Ohio Civil Rights Act, O.R.C. {4112.02(H)

United States Constitution 14th Amendment
(Rights of "due process" and "equal treatment")

STATEMENT OF MATERIAL FACTS

Duane J. Tillimon is President of Indian River Estates, Inc., the Developer of the Indian River Estates subdivision. Tillimon also owned and rented single-family homes to organizations providing housing for physically and mentally handicapped persons.

Lew Ellis is Executive Director of Preferred Properties, Inc., a county sponsored public housing agency, that builds and owns housing for mentally and physically handicapped persons.

Duane J. Tillimon is Caucasian, Lew Ellis is Negro, or African-American. Tillimon and Ellis have known each other since 1978. Tillimon and Ellis came together as a result of their common desire to provide housing for physically and mentally handicapped persons.

Preferred Properties, Inc, originally made an unsolicited offer to purchase building lots in the Indian River Estates subdivision to build a housing project consisting of a mix of "market rate" and "rent subsidized" housing units. According to its' business meeting minutes, that were introduced into evidence at trial, subsequently Preferred Properties, Inc. decided that it did not want to build any "market rate" units and proceeded to place the building of the "market rate" units *"on the back burner."* According to the trial testimony of Ellis, Preferred Properties, Inc. did not tell either Tillimon, Indian River Estates, Inc., the Department of HUD, the City of Toledo, or the State of Ohio, that they intended to delete the "market rate" housing units from their project.

According to their HUD project submission proposal, the housing occupancy was to be mixed by income, race and handicap. According to undisputed trial testimony, Ellis told Tillimon that by building a mix of "low income" and "market rate" housing the project would not adversely impact the neighborhood. Tillimon also owned the single family Ottawa Trail Estates subdivision adjacent to the multi-family Indian River Estates subdivision.

After their purchase option expired, Preferred Properties, Inc. contacted Tillimon and Indian River Estates, Inc. again, and made a new unsolicited offer to purchase every other building lot in the Indian River Estates subdivision to build only the "rent subsidized" housing units, and not any "market rate" housing units.

Indian River Estates, Inc. refused to sell only every other building lot for the "rent subsidized" units believing the that remaining "in between" lots would be not be "saleable" because no homeowner would build a new home in the middle of a public housing project.

Preferred Properties, Inc. filed a lawsuit in the United States District Court asking for a court order for "specific performance," and alleging discrimination, and demanding compensatory and punitive damages, and reimbursement for attorney fees. The lawsuit was filed by the Equal Justice Foundation and subsequently taken over by attorney Stephen Dane, and later attorney Brad Hubbell, of the law firm of Cooper & Walinski.

Because the lawsuit was for "specific performance" alleging "discrimination" the District Court Judge gave the jury an instruction that said in order to maintain a lawsuit for specific performance based upon discrimination, Preferred Properties, Inc. first had to prove it was ready, willing and able to pay Indian River Estates, Inc.'s said price. The instruction stated, in part, as follows:

> *"In order to prove a claim for discrimination upon disability,* ***plaintiff has the burden of proving*** *each of the following elements by a preponderance of the evidence..., Two,* ***the plaintiff was ready willing and able to pay the defendants said price.***"

Paragraph #13 of the Complaint filed by Preferred Properties, Inc. against Tillimon and Indian River Estates, Inc. alleged:

> *"13. On November 14, 1997, HUD notified Preferred Properties, that its' application had been approved and that $1,037,000 had been reserved for the project."* (T.T. Pages #11, #12)

In his opening remarks to the jury, attorney Stephen Dane stated:

*"**HUD approved the funding.** The funding was $1,037,000 HUD capital grant **for the purchase** and development in construction of the property..."* (T.T. Pages #11, #12)

At trial, Witness Executive Director Lew Ellis testified:

*"**We did not require any private financing** on the HUD development. We would use federal and state financing for the HUD units."* (T.T. Pages #56, #57)

After trial, District Court Judge Katz denied Tillimon's Motion for a New Trial and wrote the following Memorandum Opinion

*"Defendants raise the question of whether the plaintiff stood ready and able to proceed with the purchase as there was a lack of evidence that HUD grant was available. **At trial however, plaintiff's director testified that the HUD grant was still being held for his project."*** **(R.81)**

A judgment was awarded to Preferred Properties, Inc. against Indian River Estates, Inc. and Duane J. Tillimon in the amount of $31,500.00 in compensatory damages and $125,000.00 in punitive damages. Subsequently, the Trial Court also awarded an additional $165,000.00 for reimbursement of attorney fees to Preferred Properties, Inc.

(NOTE: Preferred Properties, Inc. foreclosed on the Indian River Estates subdivision and owns all the remaining lots in the Indian River Estates subdivision. Now some 7 years later, no "market rate" housing has been built in the subdivision, and the "in between" lots remain vacant because Preferred Properties, Inc. has been unable to sell the "in between" lots to a "market rate" home builder. The "in between" lots have been, and remain, listed for sale with a real estate broker.)

After the judgments were awarded, and the District Court denied Tillimon's Motion for a New Trial, Tillimon pursued obtaining information from the Department of HUD through the United States Freedom of Information Act, and obtained documents revealing that Preferred Properties, Inc. did not have any HUD grant approved, and that the HUD grant it applied for would not have granted any money to purchase property, but only to build dwelling units. The documents proved that Preferred Properties, Inc. had no HUD money to purchase building lots as Ellis testified at trial.

On April 1, 2004, the deposition of Lew Ellis was taken and Ellis "confessed" and "admitted" that he knew at the time of trial that Preferred Properties, Inc. had no HUD money to purchase lots.

Questioning by Indian River Estates, Inc.'s attorney Tom Ilstrup in the deposition of Ellis **(R.179)** proceeded as follows:

Attorney Ilstrup Question:
"Did you testify** (in the federal case) **that you had approved from HUD for monies set aside for the purchase of the Ottawa Trail project that you were contemplating?"

Witness Ellis Answer:
"Yes"

Attorney Ilstrup Question:
"But you did not at that point have HUD funds, is that correct?"

Witness Ellis Answer:
"No that's correct, I mean yes, that's correct."

Having proven that Witness Ellis gave false testimony at trial, Tillimon filed a Civ.R. 60(B) Motion to Vacate the Judgment based upon the fraudulent testimony of Lew Ellis, Executive Director of Preferred Properties, Inc., that not only went to the heart of the case, and the jury instruction itself, but went to the very legal basis for filing the lawsuit for specific performance and discrimination in the first place. **(R.179) (See Appendix)**

Preferred Properties, Inc. had no HUD money, or any other money according to Ellis testimony, to purchase the building lots from Indian River Estates, Inc.

The lawsuit should not have been filed.

The Trial Court denied the **Civ. R. 60(B)** motion.

The District Court's Decision was appealed to the United States Sixth Circuit Court of Appeals alleging that the Civ.R. 60(B) motion should have been granted because the perjury of Witness Lew Ellis went to the heart of the case, the jury instruction itself, and the very legal basis for bringing the lawsuit in the first place, and that there was also "fraud upon the court" because the lawsuit was part of a *"deliberately planned and carefully executed scheme to defraud"* that Preferred Properties, Inc., carried out against Tillimon from the filing of a Complaint for Specific Performance based upon discrimination when Preferred Properties, Inc. knew they had no money to purchase any building lots, until Executive Director Lew Ellis admitted in a deposition, **some four years later,** that he knew Preferred Properties, Inc. had no money from any HUD grant at the time of the trial, and also because the attorneys for Preferred Properties, Inc. knew that Preferred Properties, Inc. had no purchase money based upon the attorneys own admissions in their various briefs filed with the Trial Court and also the Court of Appeals.

In the Trial Court, on Page #7 of "Plaintiff's Opposition to Defendants' 60(B) Motion," **(R.165)** Preferred Properties, Inc.'s attorney Dane "admitted" as follows:

> *"What is clear is that Lew Ellis is asked about money HUD promised and what Preferred Properties, Inc.* ***would receive*** *– not money Preferred Properties, Inc.* ***had received****."*

In the District Court, on Page #8, of "Plaintiff's Opposition to Defendants 60(B) Motion," Preferred Properties, Inc.'s attorney Dane "admitted," when referring to Ellis' trial testimony, as follows:

*"**Preferred Properties, Inc. had to purchase the lots first,** and the money from HUD, the City of Toledo, and State of Ohio would then be used to reimburse Preferred Properties, Inc. for purchase of the land."*

On Page #14 of the Brief of Appellee, Preferred Properties, Inc.'s attorney Hubbell admitted:

*"There **was** and **is** no dispute. **All parties are in agreement that there was no HUD money available to purchase the eight lots."***

At trial, **and for over four years thereafter,** the attorneys for Preferred Properties, Inc. simply "sat back" and let the Trial Court wrongly believe that Preferred Properties, Inc. had HUD grant money for the purchase of Tillimon's building lots when the attorneys knew there was no such money. Nowhere in the record of this case does it show where the attorneys for Preferred Properties, Inc. ever told the Trial Court that Witness Lew Ellis had lied during his trial testimony.

It was only after Tillimon obtained the documents from HUD through the Freedom of Information Act, and after the subsequent "confession" of Ellis at his deposition, that the attorneys for Preferred Properties, Inc. finally admitted that they knew all the time that Preferred Properties, Inc, had to purchase the buildings lots from money other than HUD money, which there was no evidence they had any other purchase money.

The attorneys now simply argue that the judgment could not be vacated because the perjury was discovered more that one year after the judgment was rendered. In other words, the attorneys for Preferred Properties, Inc. simply argued that Ellis lied, and got away with it for more than a year, and therefore *"ha ha"* on you.

The very filing of the Complaint however was the beginning of a *"deliberately planned and carefully executed scheme to defraud"* Tillimon that was carried out by Preferred Properties, Inc., and its' Attorneys, for over four years. The lawsuit should never have been filed because there was no basis in law, or fact, to file the lawsuit.

Preferred Properties, Inc. simply had no money to purchase Tillimon's building lots. District Court Judge Katz did not even make Preferred Properties, Inc, pay for the lots, he simply gave them the lots as a credit against the judgment they obtained against Tillimon on the improper and invalid complaint. It would have been interesting if Judge Katz Ordered payment first, because Preferred Properties, Inc. obviously had no HUD grant money to pay for the lots as Ellis testified at trial.

The Jury Verdict and the District Court's Decision was Appealed and the Court of Appeals sustained the Jury Verdict and District Court's decision on January 22, 2007. **(See Appendix)**

A Petition for Rehearing En Banc was filed and denied by the Court of Appeals on May 14, 2007. **(See Appendix)**

ARGUMENT

First Assignment of Error

THE TRIAL COURT ERRED IN DENYING THE CIV.R. 60 (B) MOTION TO VACATE JUDGMENT BECAUSE TILIMON PROVED THAT PREFERRED PROPERTIES, INC. HAD NO MONEY TO PURCHASE THE PROPERTY OF INDIAN RIVER ESTATES INC. AND IT FILED THE COMPLAINT WITHOUT ANY LEGAL, OR FACTUAL, BASIS TO FILE SUCH A LAWSUIT

Second Assignment of Error

THE TRIAL COURT ERRED IN DENYING THE CIV.R. 60 (B) MOTION TO VACATE JUDGMENT BECAUSE PREFERRED PROPERTIES, INC.'S EXECUTIVE DIRECTOR, AND WITNESS, LEW ELLIS FALSELY TESTIFIED THAT PREFERRED PROPERTIES, INC. HAD MONEY FROM A HUD GRANT TO PURCHASE INDIAN RIVER ESTATES, INC.'S BUILDING LOTS WHEN HE KNEW THERE WAS NO SUCH MONEY AVAILABLE

The First and Second Assignments of Error are closely related and will be argued together.

The lawsuit that Preferred Properties, Inc. filed against Indian River Estates, Inc. and Duane J. Tillimon, was based upon the premise that Preferred Properties, Inc. had money from a HUD grant to purchase Indian River Estates, Inc.'s building lots.

That is precisely the allegation contained in the Complaint was:

> *"13. On November 14, 1997, HUD notified Preferred Properties, Inc. that its' application had been approved and that $1,037,000 had been reserved for the project."*

Today, we know the allegation was false. Today, we know that Preferred Properties, Inc. had no HUD grant approved, and that the HUD grant it applied for would not have provided any money to purchase Indian River Estates, Inc.'s building lots.

Had the attorneys for Preferred Properties, Inc. promptly told the District Court that Preferred Properties, Inc. had no money, the District Court Judge likely would likely have never even let this case go to trial based on the Judge's subsequent Jury Instruction.

Had the jury been aware that Witness Lew Ellis perjured his testimony about an issue that went to the very heart of the case, and the jury instruction itself, and the very basis for filing the complaint to begin with, the Jury most likely would not have believed anything that Ellis testified to, and have come up with a much different decision.

In ***Metlyn Realty Corporation v. Esmark, Inc.***, 763 F.2d 826, 832 (7th Circuit 1985), the Court of Appeals decided as follows:

> **"Parties and counsel have an obligation not to deceive the court...and to correct statements known to be false."** and **"...an adverse parties fraud or subornation of perjury permits a relatively free reopening of the judgment when the perjury goes to the heart of the case."**

Preferred Properties, Inc. and their attorneys let the Jury believe that Preferred Properties, Inc. had HUD purchase money. Both Preferred Properties, Inc., and its' attorneys, had a legal obligation to correct the false testimony of Witness Lew Ellis.

In the "Reply to Plaintiff's Opposition to Defendants' 60(B) Motion," Tillimon's attorney Dennis Strong, argued as follows:

"

I. Timeliness of Defendants' Motion

Plaintiff claims that Defendant's motion for relief from judgment is untimely, in that it was filed more than one year since the judgment in this case pursuant to rule 60(b). Defendant states that the rule itself allows for filing of his motion with its provision that the rule "does not limit power of the court...to set aside a judgment for fraud upon the court." In addition, as the case of Abrahamson v. Trans-State Express, Inc. 92 F.3d 425, 428 (6th Cir. 1996), cited by Plaintiff's, the court may grant a 60(B) motion if a witness gives false testimony; that the jury might have reached a different conclusion; and the party did not know the falsity. This is the case here. The Defendants did not know of the perjured testimony of Lew Ellis until his deposition was taken on April 1, 2004. Mr. Ellis had testified at trial that no private funds were needed to purchase Defendants' real property. However, as stated in their 60(b) motion. Mr. Ellis later testified, under oath, that private funds were needed and used for the purchase of the real estate.

II. Fraud Upon the Court

The Plaintiff argues that perjury by a witness does not support an action for fraud upon the court. However, courts have held that if that perjured testimony likely affected the result of the trial, the court may grant post judgment relief. See, Martin v. Chemical Bank (S.D.N.Y. 1996), 940 F.Supp. 56, aff'd., 129 F.3d 114.

Defendants allege that the Plaintiff had to be ready willing and able to purchase the Defendants' real property. As the Plaintiff

said in its appellate brief, the concept of "ready, willing and able" to purchase real estate applies only when a fair housing plaintiff seeks to raise a prima facia inference of discriminatory intent from circumstantial evidence where no direct evidence of discrimination exists. U.S. Postal Service Board of Governors v. Aikens 460 U.S. 711 (1983). Defendants claim that no direct evidence of discrimination was adduced at trial, and therefore, Plaintiff was required to prove that it was "ready, willing and able" to purchase real property. This is bolstered by the fact that the judge gave the jury the instruction that the Plaintiff must prove this fact by stating:

> In order to prove a claim of discrimination based upon disability, plaintiff has the burden of proving each of the following elements by a preponderance of the evidence: Two, the plaintiff was ready, willing and able to pay defendant's said price.

No HUD monies were available to Plaintiff to purchase Defendants' property, one of the requirements of proving its case, and that private funds were needed to purchase the property. Mr. Ellis testified that no private funds were needed. This is clearly false testimony and the Plaintiff did not prove that it was ready, willing and able to purchase Defendant's property. The jury, and the court, could have reached a different verdict had they known that no funds were available at the time of trial to purchase the property. Furthermore, the court could have directed a verdict, finding that Plaintiff did not prove a prima facia case.

For the above stated reasons, and for the reasons set forth in Defendant's motion for relief from judgment pursuant to Rule 60(b), Defendants request that the judgment rendered in this case be vacated. /s/ *Dennis Strong, Counsel for Defendants"*

Again, the very basis for filing the lawsuit was allegedly that Preferred Properties, Inc. had money from a HUD grant to purchase Indian River Estates, Inc.'s building lots. Preferred Properties, Inc. actually had no such money and no lawsuit for specific performance was justified either in law, or fact. No money, no lawsuit!!!

Third Assignment of Error

THE TRIAL COURT ERRED IN DENYING THE CIV.R. 60 (B) MOTION TO VACATE JUDGMENT BECAUSE PREFERRED PROPERTIES, INC., AND ITS' ATTORNEYS, ENGAGED IN A *"DELIBERATELY PLANNED AND CAREFULLY EXECUTED SCHEME TO DEFRAUD"* TILLIMON AND INDIAN RIVER ESTATES, INC. BY FILING A COMPLAINT FOR SPECIFIC PERFORMANCE BASED UPON THE TESTIMONY OF PREFERRED PROPERTIES, INC.'S EXECUTIVE DIRECTOR LEW ELLIS THAT PREFERRED PROPERTIES, INC. HAD MONEY FROM A HUD GRANT TO PURCHASE INDIAN RIVER ESTATES, INC.'S BUILDING LOTS WHEN PREFERRED PROPERTIES, INC. KNEW IT HAD NO SUCH MONEY AND CONTINUING THE PROSECUTION OF THE COMPLAINT FOR OVER FOUR YEARS UNTIL TILLIMON PROVED THAT PREFERRED PROPERTIES, INC. HAD NO HUD PURCHASE MONEY BY OBTAINING DOCUMENTS FROM HUD UNDER THE FREEDOM OF INFORMATION ACT AND SUBSEQUENTLY GETTING ELLIS TO "CONFESS" DURING HIS DEPOSITION THAT HE LIED AT TRIAL

Fourth Assignment of Error

THE TRIAL COURT ERRED IN DENYING THE CIV.R. 60 (B) MOTION TO VACATE JUDGMENT BECAUSE THE ATTORNEYS FOR PREFERRED PROPERTIES, INC. ADMITTED IN VARIOUS PLEADINGS, BOTH BEFORE THE TRIAL COURT AND BEFORE THE SIXTH CIRCUIT COURT OF APEALS, THAT THEY KNEW THAT PREFERRED PROPERTIES, INC. HAD NO HUD MONEY TO PURCHASE INDIAN RIVER ESTATES, INC.'S BUILDING LOTS

Fifth Assignment of Error

THE TRIAL COURT ERRED IN NOT ALLOWING ADDITIONAL DISCOVERY TO AS TO THE TOTAL KNOWLEDGE OF THE ATTORNEYS FOR PREFERRED PROPERTIES, INC. REGARDING THE FALSE TRIAL TESTIMONY OF PREFERRED PROPERTIES, INC.'S EXECUTIVE DIRECTOR LEW ELLIS GOING TO THE HEART OF THE CASE, AND THE JURY INSTRUCTION ITSELF, AND THE VERY BASIS FOR THE COMPLAINT

The Third, Fourth and Fifth Assignments of Error are closely related and will be argued together.

Preferred Properties, Inc. has argued in the Trial Court, and the Court of Appeals, that that the Civ.R. 60(B) Motion to Vacate Judgment is barred by the one-year statute of limitations for perjury.

In ***Hazel-Atlas Glass Company v. Hartford Empire Company***, 322 U.S. 238 (1944) the United States Supreme Court set aside a judgment "after more than one year" because it found a party and its' attorneys engaged in:

"a deliberately planned and carefully executed scheme to defraud."

and/or by offering false testimony, or perjury, in an affidavit, The United States Supreme Court also stated:

> "From the beginning there has existed alongside the term rule of equity to the effect that under certain circumstances, one of which is **after-discovered fraud** relief will be granted against certain judgments **regardless of the term of their entry.** *Marine Insurance Company v. Hodgson,* 7 Cranch 332, *Marshall v. Holmes,* 141 U.S. 589. This equity rule, which was firmly established in English practice long before the foundation of our Republic, the courts have developed and fashioned to fulfill a **universally recognized need for correcting injustices** which, in certain circumstances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule."
> (Page 244)

"This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of **after discovered perjury,** is believed possible to have been guilty of perjury. **Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately planned and carefully executed scheme to defraud..."**
(Page 245)

The United States Supreme Court identified the issue of the Civ.R. 60(B) motion as follows:

" At the time of the trial in the District Court in 1929, where the article seemingly played no important part, the attorneys of Hazel received the received information that both Clarke and one of Hartford's lawyers had several years previously admitted that the Hartford lawyer was the true author of the spurious publication. Hazel's attorneys did not at the time attempt to verify the truth of the hearsay story of the article's authorship, but relied upon other defenses which proved successful. After the opinion of the Circuit Court came down on May 5, 1932, quoting the spurious article and reversing the decree of the District Court, Hazel hired investigators for the purpose of verifying the hearsay by admissible evidence."

After investigation, it turned out the hearsay evidence admitted at trial was false. In reviewing the decision of the Circuit Court, the United States Supreme Court stated as follows:

"Upon consideration of what it properly termed this "sordid story" the Circuit Court, one judge dissenting, held, first, that the fraud was not newly discovered; second, that the spurious publication, though quoted in the 1932 decision, was not the primary basis of the 1932 decision; and third, that in any event it lacked the power to set aside the decree of the District Court because of the expiration of the term during which the a932 decision had been rendered. Accordingly, the Court refused to grant the relief prayed for by Hazel."

The United States Supreme Court reversed the decision of the Circuit Court because it was clear from the evidence that there existed a *"...deliberately planned and carefully executed scheme to defraud"* that was exposed by *"after discovered"* evidence involving both the party and the party's attorneys.

The United State Supreme Court reversed the Order of the Court of Appeals some 12 years after the Circuit Court of Appeals original decision. The events in Hazel-Atlas are nearly identical to the events of this case now under appeal.

In ***Great Coastal Express, Inc. v. Int'l Bhd of Teamsters,*** 675 F.2d 1349, 1357, (4th Cir 1982), the Court of Appeals set aside a judgment "after more than one year" and stated as follows:

> "Involvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud upon the court."

and

> "Equally compelling circumstances may arise, however, in which parties are entitled to be relieved from an unjust judgment arrived at through mistake, ignorance, inadvertence **or misconduct**." See, e.g. *Publicker v. Shallcross,* 106 F.2d 949, 952 (3rd Cir. 1939), cert denied, 308 U.S. 624, 60 S. Ct. 379, 84 L.Ed. 521 (1940)"

The Court of Appeals went on to say:

"We believe the truth is more important than the trouble it takes to get it"

The Order of the District Court was reversed by the Court of Appeals 12 years after the District Court's original decision.

The events in the case now before this court are essentially the same as the events in the ***Hazel-Atlas*** and ***Great Coastal Express*** cases.

The evidence in this case, as cited in the STATEMENT OF MATERIAL FACTS section of this writ of certiorari, prove that there was a *"deliberately planned and carefully executed scheme to defraud"* and that the attorneys participated in that scheme by **first** filing a complaint that had no legal basis in law, or fact, and **second** by testifying in their opening statement to the jury that their client had HUD purchase money when the attorneys at the time knew their client did not have any such money, and **third** by knowingly allowing their witness to provide false testimony that their client had HUD purchase money when the attorneys knew at the time their client didn't, and **fourth** by carrying on the *"scheme to defraud"* for over four years until Tillimon obtained documents under the Freedom of Information Act that proved Witness Ellis gave false testimony, and subsequently got Witness Ellis to admit he lied at trial. The attorneys and their client were silent until they got caught.

Tillimon requested leave to take the deposition of a HUD official so that additional evidence could be ascertained as to what extent the attorneys for Preferred Properties, Inc. knew about the HUD grant, and when the attorneys were first told that Preferred Properties, Inc. had no HUD grant, and that the HUD grant Preferred Properties, Inc. applied for would not include any purchase money.

The Trial Court DENIED the request for leave and stated in its' May 2005 **(R.189)** Memorandum Opinion and Order, as follows:

> "With respect for leave to take the deposition of the HUD representative, there is nothing now pending in this Court and there is no reason for continuing discovery by ether party, in particular the party which lost at trial, lost on appeal, and has now filed a notice of appeal again. Such motion will be denied.
> s/ *David A., Katz,* U.S. District Judge

By first denying the Civ.R. 60(B) motion, the District Court "determined" that there was nothing pending. Actually what was pending at the time the request for leave was made was the Civ.R. 60(B) motion for Relief from Judgment. Discovery would have provided additional proof that the attorneys for Preferred Properties,

Inc. knew that Preferred Properties, Inc. had no money as they admitted in their "Plaintiff's Opposition to Defendants' 60(B) motion. The additional discovery would likely have *"nailed the coffin door shut"* for the attorneys of Preferred Properties, Inc. by getting a direct a sworn statement from the HUD representative that the attorneys knew that Preferred Properties, Inc. had no HUD grant and the HUD grant it applied for would not have provided any purchase money.

Both the District Court and the Court of Appeals appear to have taken offense to Tillimon's allegations that the Preferred Properties, Inc. took part in the cover-up. The attorneys' admissions, along with the other evidence in the record, show that they did.

As to the Civ.R. 60(B) Motion itself, the District Court simply "brushed off" the second, and more detailed Civ.R. 60(B) motion that included the "admissions" of attorney Dane in his "Opposition to Defendants 60(b) Motion" filed on or about September 30, 2004 and the admissions of attorney Brad Hubbell in his Brief of Appellee. **Nowhere in the record of this case, both in pleadings and transcripts, do the attorneys deny having knowledge that their client Preferred Properties, Inc. had no money.**

The second Civ.R. 60(B) Motion to for Relief from Judgment proved the *"fraud upon the court"* that was ignored by the Court.

Sixth Assignment of Error

THE TRIAL COURT ERRED BY IGNORING TILLIMON'S COMPLAINTS THAT PREFERRED PROPERTIES, INC. REFUSED TO ALLOW TILLIMON TO SELL HIS RENTAL PROPERTIES IN ORDER TO PAY OFF THE JUDGMENT, AND THAT PREFERRED PROPERTIES, INC. AND THEIR ATTORNEYS, WERE INTERFEREING WITH HIS TENANTS THAT WANTED TO PURCHASE THE HOUSES THEY WERE RENTING BY TELLING THE TENANTS THAT PREFERRED PROPERTIES, INC. HAD A JUDGMENT ON THE HOUSE THAT PREFERRED PROPERTIES, INC. WOULD NEVER RELEASE

At the time Preferred Properties, Inc. had judgments against Indian River Estates, Inc. and Duane J. Tillimon all totaling approximately $321,000.00, the combined net worth of Indian River Estates, Inc. and Duane J. Tillimon was in excess of $3,000.000.00.

While $321,000.00 is a lot of money, it was a small portion of what Indian River Estates, Inc., and Duane J. Tillimon, owed Preferred Properties, Inc.

The only way however that Indian River Estates and Duane J. Tillimon could pay of the judgments was to sell off the real properties they owned, or for Tillimon to refinance his rental properties.

Preferred Properties, Inc recorded a judgment lien against all the real properties owned by Indian River Estates, Inc. and Duane J. Tillimon. If any real property they owned were to be sold, Preferred Properties, Inc. would receive the proceeds of the sale in return for a partial release of lien for the property being sold. Tillimon no choice how the money would be distributed. Preferred Properties, Inc. not only wouldn't accept the proceeds of a sale in return for a partial release of lien, bit they contacted Tillimon's tenants, and even tenant's of his friends, to kill any potential sales Tillimon had.

For example, Tillimon had a property at 4709 Ventura Drive in Toledo, Ohio sold on a land installment contract to a single lady with two children. The lady obtained a loan to refinance her land installment contract. The proceeds of the sale would have been approximately $50,000.00. Tillimon offered to give the proceeds to Preferred Properties, Inc. in return for a partial release of lien. Preferred Properties, Inc. refused to accept the proceeds and give a partial release of lien, and the lady obtained a lawyer from the UAW Legal Clinic and Tillimon agreed to refund her down payment to avoid being sued.

For example, Preferred Properties, Inc. filed a writ of execution against Tillimon's house at 1936 Oxleigh Circle in Holland, Ohio. The house was sold at sheriff's sale resulting in $125,000.00 in

proceeds from the sale. Preferred Properties, Inc. refused to apply the proceeds to the judgment they had against Tillimon. Tillimon appealed to the Ohio Court of Appeals for Lucas County, and the Ohio Court of Appeals decided that Preferred Properties, Inc. had to apply the proceeds to the judgment. Despite that decision, Preferred Properties, Inc. continues to refuse to apply the proceeds to the

judgment reporting to mortgage lenders, and the Lucas County Recorder's Office, that Tillimon still owes this money. This conduct "killed" Tillimon's attempt to refinance his properties.

For example, Tillimon rented a house at 5025 Oak Ridge Drive in Toledo, Ohio with an option to buy to a husband and wife with two children. Preferred Properties, Inc. contacted the tenants and told the tenants that they had a judgment lien on the house they would not release and the tenants stopped paying the rent and are being evicted.

Tillimon could go on, and on, and on, with examples of where Preferred Properties, Inc. "killed" sales of houses for Tillimon.

The credit of $216,000.00 for the eight lots transferred from Indian River Estates, Inc., plus the $125,000.00 proceeds from the sheriff's sale of the property on Oxleigh Circle, alone exceeds the amount of the total judgments of $321,000.00 awarded in the District Court.

The sale of the house on Ventura Drive would have added another $50,000.00 to work with, and the sale of the house on Oak Ridge Drive would have added another $130,000.00 to work with. Tillimon and Indian River Estates, inc. had no problem paying off the judgments if they could sell their real properties.

By refusing to allow Tillimon and Indian River Estates, Inc. to pay off the judgments, Preferred Properties, Inc. was able to foreclose on the remaining lots in the Indian River Estates subdivision. Preferred Properties, Inc. was able to purchase at sheriff's sale 15 building lots worth $900,000.00 for only $225,000.00.

Despite having paid off the judgments, Preferred Properties, Inc. is continuing to foreclose on properties Tillimon owns that they want to own. Tillimon offer to give Preferred Properties, Inc. vacant land he owns at 2200 Gallier Drive in Toledo, Ohio. Preferred Properties, inc. said that they did not want the property, and then proceed to file a foreclosure on action on the same property.

Preferred Properties, Inc. obviously by its conduct wanted to drive Tillimon and Indian River Estates, Inc. out of business and to Indian River Estate, Inc. and Tillimon to sell their real properties at sheriff's sale rather than allow Indian River Estates, Inc. and Tillimon to sell their real properties on the open market. In Lucas County, Ohio, a foreclosed property will sell for 2/3^{rds} of the sheriff appraisal, or about ½ of the market value. As in the case of the Indian River Estate subdivision, Preferred Properties, Inc. will purchase these properties themselves for half price.

In fact, Preferred Properties, Inc. has obtained a Court Order in the Lucas County Court of Common Pleas preventing Tillimon from refinancing or selling his real properties in order to pay off Preferred Properties, Inc.'s judgment. Tillimon recently received an offer to purchase his property at 3638 Willow un Drive in Toledo, Ohio, but cold not close on the sale because Preferred Properties, Inc. would not support Tillimon's motion in the county court to allow the sale to take place.

Back on January 8, 2004 Preferred Properties, Inc.'s attorney Stephen Dane mailed Federal Trial Court Judge Katz some copies of settlement correspondence between Preferred properties, inc. Duane J. Tillimon, and Indian River Estates, Inc.

On January 23, 2004 in response to attorney Dane's letter to Judge Katz, Tillimon wrote to Judge Katz regarding the conduct of Preferred Properties, Inc. in preventing sales of his rental properties to pay off Preferred Properties, Inc.'s judgments. **(See Appendix)**

On Page #7 of Tillimon's letter to Judge Katz, Tillimon advised Judge Katz as follows:

"...If all the sales would have taken place, not only would Preferred Properties judgment be paid off, but also the first mortgage to Sky Bank on the Indian River Estates subdivision would have been paid off. */S/ Duane J. Tillimon, P.E.*

Tillimon attached to his letter to Judge Katz a copy of a letter from the Department of HUD dated April 1, 2002, some two years after the Complaint was filed, indicating that Preferred Properties, Inc. still had no HUD grant, and we now know the grant would not have provided any purchase money anyway. **(See Appendix)**

After receiving Tillimon's letter in response to attorney Dane's letter, Judge Katz had an obligation to protect Indian River Estates, Inc. and Duane J. Tillimon from the unreasonable and unfair collection practices of Preferred Properties, Inc.

Tillimon and Indian River Estates, Inc. wanted to pay Preferred Properties, Inc. in full in order to continue their businesses. Preferred Properties, Inc. wanted to put Duane J. Tillimon and Indian River Estates, Inc. out of business so that Preferred Properties, Inc. could purchase the real properties of Indian River Estates, Inc. and Duane J. Tillimon at deep discount at sheriff's sale.

Preferred Properties, Inc. purchased the Indian River Estate subdivision at sheriff's sale for 25 cents on the dollar, and another client of Cooper & Walinski purchased the house at 1926 Oxleigh Circle at sheriff's sale for 70 cents on the dollar.

Even ignoring the perjury and fraud issues, Preferred Properties, Inc. is only entitled to the judgment awarded. They should not be allowed to manipulate the legal system to get more than the judgment amount.

Seventh Assignment of Error

THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES BECAUSE PREFERRED PROPERTIES, INC. SHOULD NOT BE AWARDED ATTORNEY FEES WHEN THE JUDGMENT THEY OBTAINED AGAINST TILLIMON AND

INDIAN RIVER ESTATES, INC. WAS THE RESULT OF PERJURY AND FRAUD AND THE FALSE TESTIMONY OF THEIR EXECUTIVE DIRECTOR AND WITNESS LEW ELLIS REGARDLESS OF WHETHER THE JUDGMENTS CAN BE REVERSED OR NOT

Whether or not any judgments are reversed by this Court, the United States Supreme Court should not allow any judgments for reimbursement of attorney fees when the compensatory and punitive judgments awarded were the result of perjury and fraud committed by the party obtaining the judgments.

Either the United States Supreme Court is going to "look the other way" regarding perjury and fraud in the federal legal system, or the United States Supreme Court is going to "take measures to discourage" perjury and fraud. Denying reimbursement for attorney fees will send a strong message that it will cost you money if you lie in court. The attorney fees owed are an issue between Cooper & Walinski and Preferred Properties, Inc. and/or the Equal Justice Foundation.

Eighth Assignment of Error

THE COURT OF APPEALS ERRED WHEN IT DENIED TILLIMON HIS CONSTITUTIONAL RIGHT OF DUE PROCESS TO PRESENT ORAL ARGUMENT UNDER FEDERAL RULE 34 BECAUSE THE COURT OF APPEALS ALLOWED THE OTHER PARTIES TO THE APPEAL TO PRESENT ORAL ARGUMENT DISADVANTAGING TILLIMON BECAUSE THE COURT OF APPEALS, DURING ORAL ARGUMENT, ASKED QUESTIONS THAT ONLY TILLIMON COULD ANSWER AND TILLIMON WAS NOT ALLOWED TO EMPHASIZE THE ISSUES HE FELT WERE IMPORTANT TO HIS CASE AND THEREFORE TILLIMON WAS PREJUDICED BY THE COURT'S CONDUCT

On November 15, 2006, the Clerk DENIED the Appellant's Motion to Present Oral Argument. In a follow-up telephone call, the

clerk advised Appellant Tillimon that Federal Rule 34 prohibits a *pro se* appellant from presenting oral argument. A review of Federal Rule 34 however reveals that there is no such prohibition in the rule.

It was patently unfair for the Court of Appeals to allow Appellant Indian River Estates, Inc., and Appellee Preferred Properties, Inc., to present oral argument, but not allow Appellant Duane J. Tillimon to present oral argument. Separate appeals and briefs were filed by Appellant Indian River Estates, Inc. and Appellant Duane J. Tillimon, and different issues were raised in their briefs.

Appellant Duane J. Tillimon has demonstrated in his Brief of Appellant and Reply Brief that he can articulate the issues of the case clearly and concisely.

Appellant Tillimon has appealed *pro se* two judgments that Appellee Preferred Properties, Inc. has obtained in the Lucas County Court of Common Pleas against Appellant Tillimon to the Ohio Court of Appeals for the Sixth District for Lucas County, and was successful in having the judgment reversed essentially by proving fraud on the part of Preferred Properties, Inc. in obtaining those two judgments, fraud also being the issue of this appeal. The two Decision of the Lucas County Court of Appeals are in the record of this case.

Perhaps the most compelling evidence that Tillimon was prejudiced by not being able to present oral argument, was the efforts made by Preferred Properties, Inc. to prevent Tillimon from even attending oral argument. If Tillimon had been able to attend oral argument on time, before oral arguments began, Tillimon might have convinced the Court of Appeals Panel to reverse the Clerk's decision to deny Tillimon his right to present Oral Argument.

Tillimon filed a "Motion for Re-Hearing on Oral Argument" explaining what Preferred Properties, Inc. went through to make sure that Tillimon did not show up for the oral argument.

Preferred Properties, Inc.'s attorney Brad Hubbell sought, and obtained, a "body attachment order" against Tillimon from the

Lucas County Court of Common Pleas. The justification for "body attachment order" was that that Tillimon failed to show up for a deposition after he was personally served with a copy of the summons. Actually, attorney Hubbell never served a copy of the summons upon Tillimon as evidenced by the fact that the summons was never even picked up from the court clerk by attorney Hubbell's process server. All the evidence of attorney Hubbell's conduct in obtaining the "body attachment order" is exhibits attached to Tillimon's Motion for Re-Hearing on Oral Argument.

The morning that Oral Argument was scheduled, Tillimon was arrested under the "body attachment order" and missed most of the Oral Argument. More importantly, Tillimon was not able to raise the issue of whether he could present Oral Argument before the Oral Argument commenced.

Tillimon raised many issues in his appellate briefs that were not even considered by the Court of Appeals, and not addressed in the Court of Appeals decision. Tillimon feels if he would have been able to bring these issues to the attention of the Court of Appeals, the Panels decision would have been different.

The Court of Appeals asked the attorneys for Preferred Properties, Inc., and Indian River Estates, Inc., questions that the attorneys could not answer, or could not answer properly. Neither attorney was the attorney that tried their client's case in the Trial Court. Tillimon could have answered the questions accurately.

Tillimon had a constitutional right of "due process" and a constitutional right to "equal treatment" and received neither from the Court of Appeals. Tillimon was treated differently.

Violation of "due process" and "different treatment" are yet another reasons for this Court to grant the Writ of Certiorari and review the case.

If the Court of Appeals only hears one side of an argument, it will likely agree with that side, especially if the other side is in jail at the time.

REASONS FOR GRANTING THE WRIT

There are many reasons why a Writ of Certiorari should be granted.

First, the Court of Appeals treated Tillimon differently then it treated Preferred Properties, Inc., the two main adversaries in the lawsuit and the appeal. Preferred Properties, Inc. could participate in Oral Argument. Tillimon could not. That is not justice and it prevented Tillimon from emphasizing the issues that he felt proved a *"fraud upon the court."* Obviously, Tillimon has proven "fraud" and Witness Lew Ellis has admitted *"fraud."*

Second, both the Trial Court, and the Court of Appeals, disregarded a United States Supreme Court decision that was directly *"on point"* as to the issues of the lawsuit, and is the controlling authority regarding those issues, and is the case most frequently cited regarding "fraud upon the court." In ***Hazel-Atlas Glass Company v. Hartford Empire Company,*** 322 U.S. 238 (1944), the United State Supreme Court defined *"attorney involvement"* in perjury and fraud, and *"deliberately planned schemes"* involving perjury and fraud, as exceptions to the one year time limit for a Civ.R. 60(B) Motion to Vacate Judgment. The United States Supreme Court recognized that where an attorney is involved, or where there is a *"deliberately planned and carefully executed scheme to defraud,"* it just takes longer to uncover the cover-up.

Third, the Trial Court and the Court of Appeals both ignored the admissions of Preferred Properties, Inc.'s own attorneys in their pleadings regarding their knowledge that they knew Preferred Properties, Inc. had no HUD money to purchase the building lots owned by Indian River Estates, Inc. Those admissions show that the attorney also new at trial that their Witness Lew Ellis was giving false testimony at trial. **Even more importantly, it shows that the attorneys knew that that their opening statement to the jury was false.**

In opening remarks, attorney Dane told the Jury as follows:

*"**HUD approved the funding.** The funding was $1,037,000 HUD capital grant **for the purchase** and development in construction of the property..."*

Attorney Dane's statement to the jury has been proven false.

Fourth, the District Court's decision actually encourages frivolous lawsuits because in this District Court there were no consequences for filing a frivolous lawsuit. The District Court knows that the judgments awarded were based upon perjury and fraud. The District Court knows that there was no basis in law, or fact, to justify the complaint being filed in the first place. Preferred Properties, Inc. filed a lawsuit for "specific performance" when they apparently had no money to buy anything, and knew they had no money to buy anything. The trial testimony of Witness Lew Ellis backs up the fact that Preferred Properties, Inc. had no private funds, because he did not testify that Preferred Properties, Inc. had any private funds. Not having any proof that Preferred Properties, Inc. had any money, Preferred Properties, Inc. chose perjury and fraud as the method to prove their case.

Fifth, the Trial Court's decision encourages minorities without money or credit to make unsolicited offers on property, and if their offer is refused, get a free attorney from someone like the Equal Justice Foundation, proceed to a file a false discrimination lawsuit demanding specific performance and, if they win, use the judgment amount awarded as payment for the property. The Trial Court's conduct created a totally ridiculous, and legally unacceptable, situation. Get a free attorney, and take a shot at getting a free house.

Even more ironic, the Sixth Circuit Court of Appeals ignored its' own decision in ***United States of America, Plaintiff-Appellee v. James Harrison Hathway, Defendant-Appellant,*** No. 85-1520 (6th Circuit 1986); 798 F.2d 902, Lexes P9, where the Sixth Circuit Court of Appeals itself suggested a jury instruction regarding the "reckless indifference" to the truth, and the suggested jury instruction is just as appropriate today as it was in 1987, when the Sixth Circuit Court of Appeals itself instructed as follows:

"A statement or representation is false or fraudulent within the meaning of this statute if it relates to a material fact **and is known to be untrue or is made with reckless indifference to its truth or falsity,** and is made or caused to be made with intent to defraud."

For all these reasons, the United States Supreme Court should grant the Writ of certiorari and review the Court of Appeals decision.

The Court of Appeals Decision was, like the District Court's Decision on the Civ.R. 60(B) motions, just a *"brush off"* not addressing the key issues and the relevant case citations.

Neither Court addressed the Supreme Court Decisions in either ***Hazel-Atlas Glass Company v. Hartford Empire Company***, or ***Great Coastal Express, Inc. v. Int'l Bhd of Teamsters.***

Neither Court addressed the "admissions" of the attorneys for Preferred Properties, Inc. in their various pleadings.

Neither Court was interested in "ferreting" out the truth about the attorney involvement by allowing additional discovery to support the Civ.R. 60(B) Motion for Relief From Judgment.

The purpose of housing discrimination laws is to create a "level playing field" with regard to obtaining housing.

Housing discrimination laws should not be used to allow a minority person to get something they want really, really, really, want, but cannot afford to buy.

Preferred Properties, Inc. wanted the building lots of Indian River Estates, Inc., it just had no money to purchase them. Probably, at first, it just wanted to tie the lots up in court until it got money, later it realized that it hit the jackpot, and could financially destroy Tillimon, and acquire all his real property cheap.

CONCLUSION

In its January 22, 2007 Decision, the Court of Appeals made several statements not supported by the evidence in the record.

On Page #3 of the Decision, the Court of Appeals concluded as follows:

> "In actuality, HUD had approved funding for the project at issue but, according to the department standard practice, would not make the finds available until after the purchase of the property to reimburse the recipient for the purchase price. Meanwhile, Preferred Properties asserts that Ellis's statements indicate an arrangement of private financing and allude to its anticipation of receipt of HUD moneys."

Actually Ellis's trial testimony was the complete opposite of the Court of Appeals analysis and decision. Ellis testified as follows:

> ***"We did not require any private financing on the HUD development.*** *We would use federal financing and state financing for the HUD units."*

How could the testimony be any more clear that Preferred Properties, Inc. had no arrangement for private financing as the Court of Appeals concluded in its' Decision? How could the Court of Appeals have misinterpreted such specific and direct testimony?

On Page #5 of the Decision, the Court of Appeals concluded as follows:

> *"In view of the dearth of evidence that any officer of the court knowingly engaged in wrongful conduct, the district court's denial of defendants' Rule 60(Bb) motion was not an abuse of discretion."*

The "tone" of the Decision indicates that the Court of Appeals took offense to Tillimon's allegation that attorneys engaged in fraud, and simply didn't give serious consideration to his arguments.

Tillimon cites "admissions" made by the attorneys for Preferred Properties, Inc. that show that the attorneys knew that Preferred Properties, Inc. had no HUD money for the purchase of the lots.

Attorney Dane admitted twice in his "Opposition to Defendants Rule 60(B) Motion" **(R.165)** filed on September 30, 2004 that Preferred Properties, Inc. had no HUD money. Attorney Dane admitted as follows:

> *"What is clear is that Lew Ellis is asked about money HUD promised and what Preferred Properties, Inc. **would receive**- not money Preferred Properties, Inc. **had received."***

and

> *"**Preferred Properties, Inc. had to purchase the lots first,** and the money from HUD, the City of Toledo, and State of Ohio would then be used to reimburse Preferred properties, Inc. for purchase of the land."*

Attorney Brad Hubbell admitted in his "Brief of Appellee" that Preferred Properties, Inc. had no HUD money. Attorney Hubbell admitted as follows:

> *"There **was** and **is** no dispute. **All parties agree that there was no HUD money available to purchase the eight lots."***

If the attorneys for Preferred Properties, Inc. did not want the Jury, and the Judge, to believe that the money was coming from a HUD grant, why all the discussion about the HUD grant. Why didn't the attorneys just ask Witness Ellis *"Where is the purchase money coming from?"*

Nowhere in the record of this case, do the various attorneys for Preferred Properties, Inc. ever claim that they had no knowledge that their client had no money, or that Witness Ellis had lied to them. That fact speaks a mouthful. The attorneys knew Preferred Properties, Inc. had no money or they would have simply denied the knowledge in an affidavit from **all** the attorneys involved.

The attorneys clearly wanted to mislead the Jury and the Judge to believe that the money was coming from the HUD grant because that testimony would be hard to impeach at trial. If the money was in the bank, Tillimon would have asked to see the bank statement. If the money was from of a loan, Tillimon would have asked to see a loan commitment letter or a letter of credit. There were no such documents in evidence.

The Trial Court clearly abused its' discretion and "Good Old American Common Sense," by concluding that the attorneys did not know that Witness Ellis was giving false testimony.

How could the Court of Appeals conclude that the attorneys for Preferred Properties, Inc. didn't know that Preferred Properties, Inc. had no money from a HUD grant when the attorneys for Preferred Properties, Inc. "admitted" knowing in their pleadings? How could the Court of Appeals have misinterpreted such specific and direct admissions by two different attorneys for Preferred Properties, Inc.?

The Court of Appeals decided that Tillimon could not take the deposition of a HUD representative because the case was "protracted." The case was "protracted" only because there was a *"deliberately planned and carefully executed scheme"* involving *"attorneys."* That's why additional discovery was justified. To deny the discovery, was to protect the attorneys involved.

The Court of Appeals decided that the hourly fees of the attorneys for Preferred Properties, Inc. were reasonable. That is not the issue, the issue is whether Preferred Properties, Inc. should be reimbursed for those fees since the judgment was based upon perjury and fraud. Let Preferred Properties, Inc. pay its' own attorneys' fees to the attorneys that helped them get judgment.

What is obvious from the Court of Appeals decision is that the Court of Appeals didn't really look at the evidence in the case because the analysis just doesn't "jive" with the evidence.

Judge often tell jurors not to leave their "common sense" out in the hallway. That is good advice for everyone.

Witness Ellis admitted he lied during the trial. His attorneys don't deny that they knew Witness Ellis lied at trial. The record indicates the attorneys knew Witness Ellis was lying.

All the judgments against Tillimon and Indian River Estates, Inc. should be vacated and Tillimon and Indian River Estates, Inc. should be allowed to recover their damages from the perjury and fraud committed in order to obtain the judgments that are now sought to be reversed.

Justice did not occur in this case.

Perjury and fraud, especially fraud upon the court, should never be tolerated under any circumstance, or for any reason.

Perjury and fraud should not be used to destroy your opponent.

When perjury and fraud are used to bring a phony housing discrimination lawsuit, the lawsuit does not do anything to "discourage" discrimination, it just "encourages" discrimination.

Tillimon would have been better off if he didn't return Ellis's telephone call. That would have been wrong, but probably nothing bad would have happened to him if he simply ignored Ellis.

Tillimon's problem was not that he refused to do business with Ellis, it was that he agreed to do business with Ellis.

Sometimes you just don't get what you want and it has nothing to do with your race, your color, your creed, your national origin, your familial status, or your handicap.

Respectfully submitted,

/s/ Duane J. Tillimon
Duane J. Tillimon,
Pro se Petitioner

APPENDIX

FILED
MAY 14 2007
LEONARD GREEN, CLERK

Nos. 05-3207/3485

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PREFERRED PROPERTIES, INC.,	)	
	)	
Plaintiff-Appellee,	)	
	)	
V.	)	ORDER
	)	
INDIAN RIVER ESTATES, INC. AND DUANE J. TILLIMON,	)	
	)	
	)	
Defendants-Appellants.	)	

BEFORE: KENNEDY, MOORE, and COLE, Circuit Judges.

The court having two petitions for rehearing en banc, and the petitions having been circulate not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petitions for rehearing have been referred to the original panel.

The panel has further reviewed the petitions for rehearing and concludes that the issues raised in the petitions were fully considered upon the original submission and decision of the cases. Accordingly, the petitions are denied.

ENTERED BY ORDER OF THE COURT

"s/ Leonard Green"
Leonard Green, Clerk

FILED
JAN 22 2007
LEONARD GREEN, CLERK

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 05-3207 AND 05-3485

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PREFERRED PROPERTIES, INC.,
PLAINTIFF-APPELLEE,

v.

INDIAN RIVER ESTATES, INC.
Defendants-Appellants.

On Appeal from the United States District Court for the Northern District of Ohio, Western Division

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Before: KENNEDY, MOORE, and COLE, Circuit Judges

KENNEDY, J. Defendants-Appellants Indian River Estates and Duane Tillimon (collectively hereinafter "defendants") seek review of the district court's orders (1) denying their motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b); (2) limiting discover related to the 60(b) motion (Appeal No. 05-3485); and (3) granting Plaintiff-Appellee Preferred Properties, Inc. (hereinafter "plaintiff") attorney fees for expenses incurred in the first appeal before this court and in enforcing the judgment (Appeal No. 05-3207).1 We AFFIRM the district court's orders in their entirety for the reasons explained below.2

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1 These two appeals pertain to common facts and proceedings, thus they have been consolidated for the purposes of the decision.

2 Defendants' briefs raise several issues that are not properly before this court for various reasons, among them that the claims were not raised in defendants' notices of appeal. Therefore, we do not address them further.

BACKGROUND

The underlying dispute between the plaintiff and defendants arose over an option contract to purchase undeveloped residential property for the construction of rental housing for persons with disabilities. On March 2, 2000, a jury returned a verdict for Preferred Properties, finding that defendants had violated the Fair Housing Act and Ohio's Civil Rights Act, as well as breached the option contract. The district court denied defendants' motion for a new trial and for judgment as a matter of law, granting Preferred Properties's motion for a permanent injunction and specific performance. This court affirmed the district court's denial of defendant's motion for judgment as a matter of law and a new trial on the ground that the defendants did violate the Fair Housing Act. Preferred Props., inc. v. Indian River Estates, Inc., 276 F.3d 790 (6th Cir. 2002). Additionally, this court affirmed the district court's grant of summary judgment on defendant's counterclaim. Id. Because defendants failed to comply with the district court's earlier orders, the district court ordered that the property at issue be vested in the name of Preferred Properties.

On September 20, 2004, defendants filed a Rule 60(b) motion for relief from the judgment, alleging that Preferred Properties committed fraud on the court. Defendants based this motion on allegations that Lewis Ellis, Preferred Properties's Executive Director, perjured himself when he testified at trial that funds were available for the purchase of defendants' properties. The district court denied this motion for relief from the judgment, finding that "[t]here is by no stretch of the legal imagination facts before the Court which could justify [the] conclusion" that the alleged perjury would constitute sufficient grounds for fraud on the court. The district court also issued an order awarding Preferred Properties legal fees and expenses.

In addition to the joint notice of appeal, defendants filed a 60(b) motion requesting that the district court vacate both its denial of defendants' prior 60(b) motion and its award of attorney fees and expenses to Preferred Properties. Defendants also moved for leave to take the deposition of a representative from the Department of Housing and Urban Development (hereinafter "HUD"). The district

court denied both of these motions, and defendants now appeal these denials.

ANALYSIS

I. First, defendants assert that the district judge erred in denying their 60(b) motion, which was based upon allegations of fraud upon the court. A denial of a 60(b) motion is reviewed for abuse of discretion. Doe v. Lexington-Fayette Urban County Gov't, 407 F.3d 755, 760 (6th Cir. 2005). An abuse of discretion exists only when this court has a "'definite and firm conviction that the trial court committed a clear error of judgment." Id. At 760 (quoting Davis v. Jellico Comm. Hosp., Inc., 912 F.2d 129, 133 (6th Cir. 1990)). "Relief under 60(b), moreover, is 'circumscribed by public policy favoring finality of judgments and termination of litigation.'" Id. (quoting Waifersong, Ltd. V. Classic Music Vending, 976 F.2d 290, 292 (6th Cir. 1992)).

In support of their motion, defendants point to statements that Lewis Ellis, a chief witness for Preferred Properties, made at trial to indicate that Preferred Properties already possessed the money from HUD necessary to purchase the lots. In actuality, HUD had approved funding for the project at issue but, according to the department's standard practice, would not make the funds available until after the purchase of the property to reimburse the recipient for the purchase price. Meanwhile, Preferred Properties asserts that Ellis's statements indicate an arrangement of private financing and allude to its anticipation of receipt of HUD moneys.

This court need not resolve this conflict to decide the case because, regardless, a motion based on fraud must be made "not more than one year after the judgment, order, or proceeding was entered or taken." Fed. R. Civ. R. 60(b)(3). In this case, although the jury returned its verdict on March 2, 2000, defendants failed to file a motion for relief from the judgment until September 20, 2004, far beyond the rule's explicit one-year bar.

Thus, defendants must fashion their argument as a claim of fraud on the court, which is not constrained by the one-year time limit. However, this, too, cannot succeed because an allegation of

the perjury of a witness does not suffice to constitute "fraud upon the court." H. K. Porter Co., v. Goodyear Tire & Rubber Co., 536 F.2d 1115, 1118 (6th Cir. 1976). Rather, "an officer of the court" must commit fraudulent conduct for a fraud-on-the-court claim to be legally cognizable. Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1994).

As a result, the critical issue in this case is whether plaintiff's attorney at the time, Stephen Dane, knowingly made a false statement in the proceedings or knowingly suborned perjury, providing grounds for a claim for fraud on the court. The evidence that defendants have offered is not sufficient to prove that that is the case. Defendant Tillimon's Supplemental Reply to Plaintiff's Opposition to Defendants' 60(b) Motion, filed October 21, 2004, assets that Dane made a false statement in his opening argument, indicating that Preferred Properties had the HUD money to purchase the lots in hand. However, this is insufficient to prove the fraud-on-the-court claim, as it does not provide evidence that these alleged false statements were made knowingly. Tillimon reiterates this assertion in his memorandum in support of his 60(b) motion, filed in January 2005, indicating that Dane made a false statement to the jury in his opening statement. That memorandum also states that Dane's admissions contained in Plaintiff's Objection to Defendants' 60(b) Motion contradict what he told the jury, as the motion explains that Preferred Properties had to purchase the lots first and then request reimbursement from HUD.

Tillimon claims that he sought information from HUD as to whether plaintiff had the money to purchase the property after "hear[ing] Dane casually state that his client did not know where it was going to get the money to purchase the Defendant's property" in the court of his oral argument. However, it is unclear to which oral argument Tillimon is referring, and the timing of Dane's knowledge of the alleged unavailability of the funds is crucial to the fraud-on-the-court claim.

In other correspondence, Tillimon accuses Dane of suborning perjury but does not allege that Dane himself knowingly made false statements to the court. In a letter to the district court dated January 23, 2004, Tillimon asserted that Dane suborned Ellis's

perjury when he failed to fulfill his obligation to notify the judge of Ellis's false statement. Tillimon's Reply to Plaintiff's Opposition to Defendants' 60(b) Motion also accuses Dane of "suborn[ing] perjury by not 'correcting statements he knew to be false' as required by law." In view of the dearth of evidence that any officer of the court knowingly engaged in wrongful conduct, the district court's denial of defendants' Rule 60(b) motion was not an abuse of discretion.

III. Defendants also take issue with the district court's refusal to grant him leave to take the deposition of a HUD representative. This court reviews a district court's decision to limit discovery for "'an abuse of discretion resulting in substantial prejudice.'" Doe, 407 F.3d at 765 (quoting Hahn v. Star Bank, 190 F.3d 708, 719 (6th Cir. 1999)). In H.K. Porter Co., this court explained especial reasons to defer to the trial judge's refusal of a discovery request when the judge receives the request in conjunction with a 60(b) motion:

> When two parties have opposed each other in a protracted lawsuit tried to judgment, and the losing party's motion for relief under Rule 60(b) does not indicate to the Judge who presided at the trial that his Court has been victimized by the fraud of the winning party, it is well within his discretion to require the moving party to make a showing in support of its allegations before requiring the prevailing party to submit A second time to extensive discovery to protect his judgment.

536 F.2d at 1119. Here, the parties had some discovery and an evidentiary hearing, and defendants still failed to make a convincing showing that a fraud had been perpetrated upon the court. We cannot find error in the judge's decision to limit discovery in this way.

III Defendants also allege that the district court awarded excessive fees and expenses. The Fair Housing Act provides that "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee and costs." 42 U.S.C. § 3613(c)(2).

Abuse of discretion is the standard for reviewing an award of attorney fees under the Fair Housing Act. See Stewart v. Crosson, 774 F.2d 158, 159 (6th Cir. 1985). In the present case, the district court, "[h]aving reviewed the hourly rates charged by attorneys, paralegals and others and the expenses," awarded Preferred Properties $82,489.98. The district court calculated that that amount would reimburse Preferred Properties for $25,000 in legal fees plus expenses of $1,983.35 related to defending the judgment on appeal, in addition to $50,000 in legal fees and $5,506.63 in expenses related to enforcing the judgment. The district court did not abuse its discretion in doing so.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court's orders.

I hereby certify that this instrument
document no.189filed on 3/7/05, is
a true and correct copy of the
electronically filed original.
Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio
By: s/"J Bethel"
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

PREFERRED PROPERTIES, INC.,

Plaintiff,

-vs-

INDIAN RIVER ESTATES, INC., ET AL.,

Defendants.

Case No. 3:99 CV 7342

MEMORANDUM OPINION AND ORDER

KATZ, J.

Before this Court is the motion of the Defendants under Rule 60(b) for relief from judgment and requesting the Court to vacate its Memorandum Opinion and Order of January 4, 2005 and its Memorandum Opinion and Order of January 7, 2005. (Doc. No. 179). That motion has been supported by an Affidavit of Duane J. Tillimon filed February 1, 2005 and a supplemental memorandum as to all of which Plaintiff has filed an opposition and a request for

sanctions. Mr. Tillimon has replied to Plaintiff's request for sanctions and has filed a motion for leave to take the deposition of an HUD representative. (Doc. No. 178). Plaintiff has filed an opposition to this last motion. The Court has reviewed all of the foregoing documents and will deny all of the pending motions filed by the Defendants.

This is the second motion filed by the Defendants for relief from judgment and is based primarily upon the reassertion by the Defendants that in his testimony at trial Lew Ellis committed a fraud upon the Court. That is the same argument considered by the Court in the first Rule 60(b) motion, and the Court denied that motion. No new arguments have been made. In his affidavit (Doc No. 180), Mr. Tillimon alleges that attorney Dennis Strong "has never represented Defendant Duane J. Tillimon in this lawsuit. Attorney Strong inadvertently entered an appearance ***, but that appearance was a mistake. Attorney Strong has notified Defendant Tillimon that he will not be representing either" Defendant in this case. According to the docket in this case, John G. Rust is now representing these Defendants. The plaintiff has also requested sanction be imposed by the Court under Rules 11 and 70 and the inherent authority of the

Court to control its docket. Because Mr. Rust's participation comes late in the day in this case, the Court will not take that action at this time and will deny the motion for sanctions, without prejudice, however, to the same being renewed should these repeated and repetitive motions, previously ruled upon, continue to be filed in this case.

With respect to the Defendants' request for leave to take the deposition of the HUD representative, there is nothing now pending in this Court and there is no reason for continuing discovery by either party, in particular the party which lost at trial, lost on appeal, and has now filed a notice of appeal gain. Such motion will be denied.

The Court denies both pending motions filed for or on behalf of the Defendants in this case, and denies, without prejudice to renewal thereof, the Plaintiff's request for imposition of sanctions.

IT IS SO ORDERED.

"s/s/David A. Katz
DAVID A. KATZ
U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

PREFERRED PROPERTIES, INC.,

Plaintiff,

Case No. 3:99 CV 7342

-vs-

MEMORANDUM OPINION
AND ORDER

INDIAN RIVER ESTATES, INC.
ET AL.,

Defendant.

KATZ, J.

This matter is before the Court on the Defendant's motion for relief from judgment (Doc. No. 163) supported by a memorandum, as to which the Plaintiff has filed an opposition (Doc. No. 165) and the Defendant 's reply (Doc. No. 169). The Court has reviewed all memoranda and finds that the Defendants' motion is not well taken and will be denied.

The Defendants have filed their motion under Federal Rule of Civil Procedure 60(b). The gravamen of their complaint is that the Chief Executive Officer of the Plaintiff testified at trial that there was availability of funds to purchase the properties which are the subject matter of this litigation and that said funds had been made available by the Department of Housing and Urban Development ("HUD"). Because generally under Rule 60(b) a party must seek relief from judgment within one (1) year after the date of the judgment and the judgment in this case was rendered approximately four (4) years ago, it would appear to the Court that the only basis upon which the Defendants could possibly prevail is if they could show fraud upon the Court. Having reviewed the relevant parts of the record, this Court cannot conclude that Lew Ellis, Executive Director of Plaintiff, committed perjury; however, even if it should

be concluded that he did, it is not clear at all that the outcome of the trial in this cause would have been any different.

This case has a very long and tortured history beginning with the filing of the complaint to force the Defendant to comply with the terms of a written contract for the sale of lots; subsequent to a trial before a jury, a verdict was rendered finding that the Defendants had, in fact, discriminated against the ultimate users of the property and that such discrimination was based upon the fact that those users were disabled persons. The verdict was reduced to judgment by this Court and appealed to the Court of Appeals for the Sixth Circuit. The jury verdict was upheld by the Court of Appeals and the case returned to this Court for further proceedings.

The definition of "fraud upon the Court" is a very narrow one indeed. The concept is limited to that nature of fraud which casts a pall over the impartiality of adjudicating a case and prevents an adverse party from fully and fairly presenting his case or defense. It is generally held that sufficient grounds for proving fraud upon the Court are those in which an unconscionable scheme was designed to influence the Court, or in this case the jury in its decision. There is by no stretch of the legal imagination facts before the Court which could justify that conclusion. The cases cited in the Plaintiff's opposition to this motion clearly hold that a judgment obtained by merely perjured testimony is an insufficient bases for granting the equitable relief from judgment requested by the Defendants.

First, Mr. Ellis did not commit perjury. The portions of his examination at trial set forth at pages 5 through 8 of the Plaintiff's opposition memorandum clearly drive one to that conclusion. Second, even if a strained reading of the record could lead one to the conclusion that Mr. Ellis did in fact commit perjury, the Defendants have not shown by clear and convincing evidence that such fraud prevented them from fully and fairly presenting their defense. This Court will not belabor the matter further.

The Defendants, including Indian River Estates, Inc. and Duane J. Tillimon have not only had their day in Court, they have dragged this matter on in this Court, the Court of Appeals and state courts far beyond the limits of reasonableness. The Defendants' motion for relief from judgment under Rule 60(b) (Doc. No. 163) is

denied. Costs will be assessed to the Defendant and the Court will consider motions concerning sanctions.

IT IS SO ORDERED.

s/"s/David A. Katz"
DAVID A. KATZ
U.S. DISTRICT JUDGE

DUANE J. TILLIMON, P.E.
3601 W. ALEXIS ROAD, SUITE #203
TOLEDO, OHIO 43623
(419) 474-2234

January 23, 2004

The Honorable David A. Katz
United States District Court
For the Northern District of Ohio, Western Division
U.S. Courthouse and Customs Building
1716 Spielbusch Avenue
Toledo, Ohio 43624-1385

Re: Preferred Properties, Inc. v. Indian River Estates, Inc., et al.
Case no.: #99CV7342
United States District Court for the Northern District of Ohio,
Western Division

Dear Judge Katz:

I am in receipt of a letter from attorney Stephen Dane addressed to you and dated January 8, 2004. The letter apparently enclosed with it, some of the settlement correspondence that has taken place during the last four yours. It is my understanding that settlement discussions are not to be part of the record, and perhaps that is why attorney Dane has written you a personal letter. Since my attorney, Harland M. Britz, is out of town, I am responding to this letter directly since Mr. Dane's remarks cannot go unchallenged.

Attorney Dane's letter, like his most of his pleadings, contains distortions, misrepresentations and omissions.

If you recall, at the evidentiary hearing of July 28, 2003 I attended along with attorney Britz representing Indian River Estates, Inc. Felix Melchor, Vice President of Special Assets and Attorney Dana Farthing attended representing Sky Bank. Lew Ellis, Executive Vice-President and attorney Stephen Dane attended representing Preferred Properties, Inc. Both myself and Mr.

Melchor were cross-examined by attorney Dane. Over my private objections to attorney Britz, you even met privately with Mr. Melchor in your chambers outside the presence of both myself and attorney Britz.

After you recessed the hearing, you suggested that the parties and Sky Bank meet in your chambers to discuss both possible settlement and the possible transfer of lots to Preferred Properties, Inc. After you left the courtroom, attorney Dane began shouting and ranting and raving and stating that he would not meet with me under any circumstance. Essentially, he said that he didn't like me.

I agreed to leave, however Sky Bank stated to attorney Dane that they would like me to attend since Indian River Estates, Inc. was their customer and client. Attorney Dane refused to meet with Sky Bank and myself at that time, and left the courtroom after agreeing to talk to attorney Britz and attorney Farthing at a later date.

Attorney Dane refused to meet with Sky Bank and myself until August 5, 2003. At that time, Lew Ellis, **not Sky Bank** as attorney Dane stated in his letter to you, made a settlement proposal. When I challenged whether Lew Ellis had authority to make such a proposal, he admitted he had no such authority.

We did not hear back from Preferred Properties, Inc. again until November 14, 2003 nearly three and a half months later. Preferred Properties, Inc. wanted Indian River Estates, Inc. to deed the entire Indian River Estates subdivision to them as settlement of the lawsuit. They claimed that the settlement was worth $295,000.00 however the Bankruptcy Court already established the value of the subdivision at $1,657,713.00 which meant that Indian River Estates, Inc. had almost $1,000,000.00 in equity **after deducting the first mortgage and judgment** from the value. The proposed settlement would give Preferred Properties, Inc. a million dollars more than they were entitled to.

Since the time of that settlement proposal, the City of Toledo approved a large scale Kroger's Save-on Shopping Center for the property directly across the street from the Indian River Estates

subdivision and we have been receiving telephone calls from commercial developers interested in the sit for commercial uses. The Indian River Estates subdivision may be worth even more than it was worth at the time of the bankruptcy filing.

Prior to attorney Dane's letter of November 14, 2003 every single settlement proposal that was made, was made by Indian River Estates, Inc. Preferred Properties, Inc. did not make a single settlement proposal and Lew Ellis did not present any of our settlement proposals to the Board of Directors of Preferred Properties, Inc. Although we repeatedly requested to meet with the Board of Directors, Lew Ellis would not permit us to do so.

The following are some of the settlement proposal we made.

SETTLEMENT PROPOSAL #1

The first settlement proposal was actually made by the Court itself at the hearing on the injunction prohibiting us from selling building lots in the Indian River Estates subdivision. The Court proposed that we sell eight adjacent lots rather than every other lot in order to minimize the damages from the subsidized housing by eliminating the "in between" lots. We accepted the proposal, however Lew Ellis refused to submit the settlement proposal to the Board of Directors unless we agreed to pay the Equal Justice Foundation $15,000.00 for filing the lawsuit. We did not accept the proviso.

SETTLEMENT PROPOSAL #2

A few weeks later, we proposed to sell Preferred Properties, Inc. the nine adjacent lots on the other side of the street. These lots were much larger and had storm sewers with made the lots even more valuable. Again Lew Ellis refused to present the settlement proposal to the Board of Directors unless we first agreed to pay the Equal Justice Foundation the $15,000.00 for filing the lawsuit.

SETTLEMENT PROPOSAL #3

The last settlement proposal we made prior to going to trial was that we offered to develop and operate a project identical to the one project Preferred Properties originally proposed to H.U.D., the City

of Toledo, Key Bank and ourselves. That is, we would develop a project that would be a mix of rent subsidized and open market units. This would eliminate the problem of selling lots between rent subsidized units but still provide the rent subsidized units Preferred Properties was interested in providing to the community. Lew Ellis again refused to present our settlement proposal to the Board of Directors.

SETTLEMENT PROPOSAL #3(A)

At the time we presented Proposal #3 we also offered to record a plat restriction requiring that anyone who constructs an apartment building on lots #10 thru #23 in Indian River Estates must construct all handicapped (wheelchair) accessible units on those lots. This settlement proposal was also not presented to the Board of Directors by Lew Ellis.

SETTLEMENT PROPOSAL #4

After trial, we again presented Settlement Proposal #3. Lew Ellis again refused to present the settlement proposal to the Board of Directors.

SETTLEMENT PROPOSAL #5

After appeal, we offered to transfer to Preferred Properties **at no charge** a parcel of land, two blocks south of the Indian River Estates subdivision, that would allow Preferred Properties to construct and rent seventeen single family homes. Again Lew Ellis would not present the settlement proposal to the Board of Directors.

SETTLEMENT PROPOSAL #6

After appeal, we offered to transfer to Preferred Properties, Inc. **at no charge** a parcel zoned for 16 units in a very popular section of the city in the Washington Local School District. Again Lew Ellis refused to present the settlement proposal to the Board of Directors.

SETTLEMENT PROPOSAL #7

After appeal, we offered to transfer to Preferred Properties, Inc. fourteen adjacent building lots in the Indian River Estates subdivision s full settlement of the lawsuit. Mr. Ellis continued to refuse to present any of our settlement proposals to the Board of Directors.

SETTLEMENT PROPOSAL NO. 8

We offered to construct the project that Lew Ellis wanted to develop at a reduced cost in order to "work off" the judgment. We received no response from Lew Ellis.

If Preferred Properties, Inc. would have accepted any one of these eight settlement proposals, their project would be completed by this time. Six of these settlement proposals would have resulted in the rent-subsidized housing project being located in the Indian River Estates Subdivision. Two of these proposals would have resulted in the rent-subsidized housing project being located either nearby, or in the same school district.

Lew Ellis would not even discuss any settlement proposal. Lew Ellis wanted us to transfer the eight lots he wanted to Preferred Properties, Inc. and wanted us to pay the judgment off in cash. That was financially impossible for us to do because we could not pay off the Sky Bank loan and the judgment at the same time. We just didn't have the resources and since the judgment was also against me personally, I could not borrow money personally and loan it to Indian River Estates, Inc.

I did try to sell off some of my real estate holdings, but Preferred Properties, Inc., through attorney Dane, Executive Director Lew Ellis and Presidents William Dent and Joseph Kunkle, thwarted those sales.

4709 VENTURA DRIVE

This house was sold on a land installment contract to a single black lady with two children. During her two years in the house, she made her rent payments on time, took care of her credit problems, and obtained loan to refinance her land contract.

Preferred Properties, Inc. also filed a "Writ of Execution" against 10 of my properties asking the Common Pleas Court to order the Lucas County Sheriff to sell the properties at a sheriff's sale subject to the exiting first mortgages on the property and also subject to the judgment lien of Preferred Properties, Inc.

4437 COPPER CREEK LANE

This house was rented with an option to purchase to a single black lady with two children. The lady obtained a loan in order to exercise her option and purchase the house, however Preferred Properties, Inc. refused to release its' judgment lien in return for he proceeds of the sale. The lady stopped making her rent payment and she was evicted from the house. The lady now has a judgment against her for over $8,000.00. The lady also forfeited $3,000.00 option consideration/

2902 POWHATTAN PARKWAY

This house was rented with an option to buy to a single white lady with two children. One of her sons was mentally disabled. After Preferred Properties sent her a notice that her house was being sold at sheriff's sale, she stopped making her rent payments and was evicted from the house. She is awaiting a hearing on the money she owes in rent and damages. The lady also forfeited $3,600.00 option consideration.

5025 OAK RIDGE DRIVE

This house was rented with an option to purchase to a white couple with two children. They were actively trying to get financed to purchase the house. After Preferred Properties, Inc. sent them a notice that their house was to be sold at sheriff's sale, they stopped making their rent payments. They are in the process of being evicted. The couple is forfeiting $3,000.00 option consideration.

3955 BRANCH DRIVE

This house was rented to a single white man with one child. Although he wanted to purchase the house, after Preferred Properties, Inc. sent him a notice that the house was being sold at sheriff's sale, he vacated the house at the end of the lease.

2139 LISA LANE

This house was rented to a white couple with two children. They wanted to purchase the house after there bankruptcy was discharged two years. After Preferred Properties, Inc. sent them a letter that their house was being sold at sheriff's sale, they were deluged by investors calling them to see the house. They kipped out on the lease a month before it expired. A civil suit is to be filed against them for rent.

2139 LISA LANE

This house was re-rented to a white couple expecting a baby. **The couple was represented by attorney Dane.** Attorney Dane told the couple that his other client Preferred Properties, Inc. had a judgment lien on two building lots across the street that the couple wanted to purchase in the Ottawa Trail Estates subdivision, adjacent to the Indian River Estates subdivision. Preferred Properties, Inc. did not have a judgment lien on the lots, but after talking to attorney Dane the couple stopped making their rent payments and were evicted from the house owing a balance of$40,000.00 on the lease.

580 N. BYRNE ROAD

This property is rented to a commercial business. The operator has had several conversations with attorney Dane. The operator has been evicted from the property, but has appealed the eviction so the eviction has been stayed. There is a balance of over $100,000.00 owed on the lease.

5005 YORKSHIRE ROAD

This house was sold on a land contract to a married couple with three children. The vendee has been in default since prior to the Preferred Properties, Inc. lien. I cannot foreclose on the land

contract however because the vendees' attorney has threatened to sue me because of the vendees' inability to sell the house due to the fact that Preferred Properties, Inc. will not release it's lien in return for the proceeds of the sale.

There are also several properties in the Ottawa Trail Estates subdivision that are owned by my former construction manager. He was not involved in the Preferred Properties lawsuit and Preferred Properties doe not have a judgment lien on his properties. However, Preferred Properties had told his tenants that they have a judgment lien on his properties.

2133 LISA LANE

This house has a first mortgage to Sky Bank. My construction manager signed a contract to sell this house to an elderly gentleman, about 75 years old, who wanted to move out of a dangerous neighborhood and live closer to his adult son in Point Place. Preferred Properties told the title company that they had a claim on the house and the title company would not insure title. The purchaser was refunded his earnest money and the house has remained vacant since. **Preferred Properties, Inc. does not have a judgment lien on this house.**

2142 LISA LANE

This house has a first mortgage to Sky Bank. My construction manager rented the house to a white couple with two children. **The couple was represented by attorney Dane.** The couple wanted to purchase the house, but attorney Dane told them his other Client Preferred Properties, Inc. had a judgment lien on the house and Preferred Properties, Inc. would not release the lien for the proceeds of the sale. The couple skipped out on the lease with a balance of $100,000.00 owed on the lease. Attorney Dane sent the couple to another attorney after the couple broke the lease. **Preferred Properties, Inc. doe not have a judgment lien on this house.**

2146 LISA LANE

This house has a first mortgage to Sky Bank. My construction manager rented the house with an option to purchase to a white couple with four children. **The couple was represented by attorney Dane.** The couple obtained a loan to exercise their option, but attorney Dane told them that his other client Preferred Properties, Inc. had a judgment lien on the house and that Preferred Properties, Inc. would not release the lien for the proceeds of the sale. The couple skipped out on the balance of the lease with a balance of $40,000.00 owed on the lease. The couple also forfeited $6,000.00 option consideration. Attorney Dane sent the couple to another attorney after the couple broke the lease. **Preferred Properties, Inc. does not have a judgment lien on this house.** In addition to garnishing my savings account, Preferred Properties, Inc. was also successful in selling one of my rental properties at sheriff's sale.

1926 OXLEIGH CIRCLE

This house is rented to a white couple with five children. It was sold at sheriff's sale and the sale has been confirmed by the Common Pleas Court and is awaiting preparation of the deed. Because the sheriff's sale was the result of Writ of Execution rather than a foreclosure lawsuit, the first mortgage and judgment lien has not been cleared from the property. Preferred Properties, Inc. successfully tricked the purchaser into paying too much for the property. **The proceeds of the sale will be approximately $130,000.00.**

The tenants who wanted to purchase the house they were renting should have been allowed to purchase the house. Preferred properties, Inc. abused the legal collection procedures and seriously damaged innocent persons that had nothing to do with my dispute with Preferred Properties, Inc. **The lives of these tenants and their children have been unnecessarily disrupted.** Some of these tenants lost money and some have also ruined their credit. If all these sales would have taken place, not only would the Preferred Properties' judgment be paid off, but also the first mortgage to Sky Bank on the Indian River Estates subdivision would have been paid off.

Martin Luther King said that a person should be judged by the "content of his character" and not the "color of his skin." When I refused to sell lots to Lew Ellis, it was not because he was black, and it was not because he represented minorities. It was because he reneged on his commitment to me, to the community, to the city, to Key Bank and to the Department of H.U.D. to build a housing project that would be integrated by "income, racial makeup, and handicap."

Lew Ellis was a product of the affirmative action programs of the 1970's. He has always worked in jobs created for minorities. In other words, he has made a career out being black. I don't begrudge him that if that is all that is available to him. What I do object to is using the race card to get what he wants. When I stood up to Lew Ellis, he couldn't handle it. Nobody ever stood up to him before.

Remember, at the first hearing in this lawsuit you told the attorneys that this case should have been brought as a contract lawsuit, not a discrimination lawsuit. **You were also unwilling to stand up to Lew Ellis in order to be politically correct.**

Lew Ellis was embarrassed and he felt I was to blame. That's why he played the race card against me, and that is why he chose to financially destroy me, rather that build his project. Preferred Properties, Inc. now has to suffer the consequences of Lew Ellis' vendetta against me.

The only way that Lew Ellis can save face with his Board of Directors is to have you order Indian River Estates, Inc. to give Preferred Properties, Inc. the subdivision for the $400,000.00 that is owed Sky Bank on the fist mortgage. That is what their settlement letter demanded and that is what they are not demanding from you. That is not fair to the other creditors of Indian River Estates, Inc., including myself.

Preferred Properties, Inc. is only entitled to recover the amount of its' judgment. Preferred Properties, Inc. is only entitled to recover the amount of its' judgment. Preferred Properties, Inc. is not going to let the lots it wants unless it bids for the lots at sheriff's sale. After the sheriff's sale, the Preferred Properties judgment will

be paid off because the minimum bid of 2/3's of the appraised value is substantially more than the total of the first mortgage and the judgment lien together, especially since the Kroger Shopping Center has been approved across the street.

Preferred Properties, Inc. screwed up it s deal as a result of the conduct of Lew Ellis, **not my conduct.** It is not the responsibility of the Court to bail out Lew Ellis, or Preferred Properties, Inc., because it was unreasonable, not for business reasons, but for the personal reasons of its' director.

I have requested that attorney Britz bring up another issue before the Court that I believe resulted in an improper judgment against myself and Indian River Estates, Inc.

You gave the jury the following jury instruction:

> "In order to prove a claim of discrimination based upon a disability, plaintiff has the burden of proving each of the following elements by preponderance. of the evidence:
> Two, the plaintiff was ready willing and able to pay the defendant's said price."

Lew Ellis testified that Preferred Properties, Inc. had money from the federal grant. That is the only place that Lew Ellis testified that Preferred Properties, Inc. had any money to purchase the lots from Indian River Estates, Inc.

Lew Ellis committed perjury.

If you review the documents attached to attorney Danes letter to Harland Britz dated December 16, 2003, you will see that all the financing commitments were issues two to three years after the preferred Properties, Inc. filed its' lawsuit against Indian River Estates, Inc. and myself.

Even more importantly, after fighting my way through the United States Freedom of Information Act, I discovered that even as late as August 1, 2003, Preferred Properties, Inc. still didn't have its

funding available from the federal grant to purchase the building lots.

The perjury of Lew Ellis was suborned by attorney Dane and the Board of Directors of Preferred Properties, Inc. If it was not suborned prior to trial, it was suborned after the trial when attorney Dane and the Board of Directors failed in their obligation to notify you that Lew Ellis committed perjury.

On February 10, 2003 Preferred Properties filed a response in the Bankruptcy Case in which they stated on page #2, paragraph "D" as follows:

> **"Debtor continues to make allegations, without any substantiation, that Preferred Properties cannot make payment on the sales contract."**

and

> **"It was ready in April 1999, when it signed the sales contract, and it is ready now. Preferred Properties has a line of credit With a conventional lender to make Payment on the real estate."**

When I read this I asked myself, "If Preferred Properties had money in April 1999 from the federal grant, why would they need a line of credit in February 2003?"

Under the Freedom of Information Act, I obtained a copy of a letter from the United States Department of H.U.D. to Lew Ellis dated August 1, 2004 which letter states:

> **"Pursuant to your request, please find a Firm Commitment Package for the subject project. Please not, you must submit your draft closing packages in accordance of your targeted endorsement date. Failure to do so, may result in subsequent delay of your closing date."**

Page 3 of the letter states:

"VALUATION: Mortgage credit note: Capital Fund Valuation needs to be augmented by Approximately $630,500.00."

Even as late as August 1, 2003, Preferred Properties, Inc. did not have any funds from the U.S. Department of H.U.D. as Lew Ellis swore Preferred Properties, Inc. had at trial. In fact, if the Bankruptcy Court pleading is correct, it appears that Preferred properties, Inc. did not even have the federal money as late as February 10, 2003.

Enclosed pleas find a copy of the H.U.D. letter to Lew Ellis.

Lew Ellis committed perjury.

Attorney Dane and the Board of Directors suborned that perjury.

The judgment against Indian River Estates, Inc. and Duane J. Tillimon should be vacated.

Sincerely,
S/ "Duane J. Tillimon"
Duane J. Tillimon, P.E.

Cc:
Harland M. Britz
Attorney for Indian River Estates, Inc., et al.
U.S. District Court Case No: 3:99CV7342

Thomas G. Ilstrup
Attorney for Indian River Estates, Inc., et al.
LCCCP Case No. 03 CI 2997

Dana Farthing
Attorney for Sky Bank

Stephen Dane
Attorney for Preferred Properties, Inc.

U.S. Department of Housing and Urban Development

Cleveland Office, Region V
The Renaissance on Playhouse Square
1350 Euclid Avenue, Suite 500
Cleveland, Ohio 44115-1815

August 1, 2002

Lewis Ellis, Executive Director
Preferred Properties, Inc.
2001 Collingwood Blvd.
Toledo, Ohio 43620

Dear: Mr. Ellis

Project No. 042-HD072
Subject: OTTAWA RIVER ESTATES
4500 Sudar Avenue
Toledo, Lucas, Ohio

Pursuant to your request, please fine attached Firm Commitment Package for the subject project. Please note, you must submit your draft closing packages in accordance of your targeted endorsement date. Failure to do so, may result in subsequent delay of your closing date.

Sincerely,
S/ "Dennis G. Morton"
Dennis G. Morton
Director
Cleveland Multifamily Program Center